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09/954,775	09/18/2001	Michael Orlando Cimini	13DV13971	7795

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EXAMINER

VAN DOREN, BETH

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/954,775

Applicant(s)

CIMINI ET AL.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20010918.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The following is a non-final, first office action on the merits. Claims 1-20 are pending.

Claim Objections

2. Claims 2-7 are objected to because of the following informalities: omitted word. For example, claim 2 recites “wherein said server further configured to receive information pertaining to process performance evaluation categories”, which should more appropriately be --wherein said server is further configured to receive information pertaining to process performance evaluation categories--. Claims 3-7 contain similar problems, wherein the word “is” is omitted. Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 9-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e. the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory

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subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 9-14 recite a method for determining evaluation categories, receive and compile information, compare the received information with reference information and display the results via a device. Examiner points out that no functional step is implemented in these claims using any technology. While the results are displayed on a device, this is a nominally recitation of technology that does not cause any functional change or effect to occur. Therefore, it is respectfully submitted that claims 9-14 are directed towards non-statutory subject matter. Claim 15-20 also recites a method with no technology recited in the body of the claims that cause any functional change or effect to occur, and therefore it is respectfully submitted that claims 15-20 are also directed towards non-statutory subject

As to the technological arts recited in the preambles, mere recitation in the preamble (i.e. intended or field of use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the body of the claims. In the present case, none of the recited steps of the claims are directed to anything in the technological arts, as explained above. Looking at each of the claims as a whole, nothing in the body of each of the claims recites any structure or function that suggests that a computer functionally performs the recited steps. Therefore, the preamble is taken as merely the intended or field of use.

Although the invention of claims 1-20 produce a useful, concrete, and tangible result, since the claimed invention is not within the technological arts, as explained above, claims 1-20 are deemed to be directed towards non-statutory subject matter.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4, 6-10, 12-18, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Powers et al. (U.S. 6,604,084).

As per claim 1, Powers et al. discloses a system for evaluating process performance, said system comprising:

a device (See figure 1 and column 2, line 58-column 3, line 13, wherein a client device is disclosed); and

a server connected to said device and configured to receive process production capability information data from a user via said device (See figure 1, column 2, lines 58-67, and column 3, lines 14-24), said server further configured to:

compile the received information (See column 2, lines 1-12, column 3, lines 39-55, column 4, lines 20-40, column 9, lines 14-32, which compile received information);

display to the user information related to the production process (See column 2, lines 1-12, column 3, lines 39-55, column 4, lines 20-40, and column 5, lines 25-28, wherein information is displayed to a user);

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compare the received information to reference information (See column 5, lines 25-28, column 11, line 49-column 12, line 10 and lines 44-51, column 13, lines 18-36, which discloses processing the received information against reference information); and

display the results of the compared information to the user via said device (See column 2, lines 1-12, column 3, lines 39-55, column 4, lines 20-40, and column 5, lines 25-28, wherein results information is displayed to a user).

As per claim 2, Powers et al. discloses wherein said server is further configured to receive information pertaining to process performance evaluation categories selected by the user (See column 9, lines 47-64, column 11, lines 32-60, wherein the evaluation categories are set up by a user).

As per claim 3, Powers et al. discloses wherein said server is further configured to receive information regarding at least one of a planning, shop practices, and operator skill (See column 9, lines 5-30, which discloses receiving information regarding operator skill).

As per claim 4, Powers et al. discloses wherein said server is further configured to receive information regarding at least one of a complexity, conditions, control, error proofing, measurement, and process (See column 2, lines 50-60, column 3, lines 45-60, which discloses productivity analysis of the process).

As per claim 6, Powers et al. discloses wherein said server is further configured to:
assign received information a weighted value (See column 9, lines 10-30, and column 11, line 62-column 12, line 25, wherein a weighted value is assigned received information);
sum received information weights (See column 9, lines 10-30, column 10, lines 1-12, and column 11, line 62-column 12, line 25, wherein received information is summed);

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evaluate weighted summed data (See column 9, lines 10-30, column 10, lines 1-12, and column 11, line 62-column 12, line 25, wherein the data is evaluated); and

display results in a ranked order based on weighted data (See column 2, lines 1-12, column 3, lines 39-55, column 4, lines 20-40, and column 5, lines 25-28, wherein results are displayed, the results based on the weights).

As per claim 7, Powers et al. teaches wherein said device is configured to be a server for a network of customer devices (See figure 1 and column 2, line 58-column 3, line 22, column 5, lines 25-45, wherein the device serves to other devices).

As per claim 8, Powers et al. discloses wherein said server and said device are connected via a network (See figure 1, column 3, lines 1-20, column 5, lines 39-45, wherein the server and device are connected via a network).

As per claim 9, Powers et al. teaches a method for evaluating performance capabilities of a production process by operating a system including a server and at least one device connected to the server, said method comprising:

determining evaluation area categories (See figure 5A-B, column 8, line 60-column 9, line 17 and lines 45-60);

receiving information relevant to the capabilities of the production process within the evaluation categories (See column 2, lines 1-12 and 50-60, column 5, lines 25-30, column 9, wherein information is received);

compiling the received information (See column 2, lines 1-12, column 3, lines 39-55, column 4, lines 20-40, column 9, lines 14-32, which compile received information);

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comparing the received information to reference information (See column 5, lines 25-28, column 11, line 49-column 12, line 10 and lines 44-51, column 13, lines 18-36, which discloses processing the received information against reference information); and

displaying the results to the user via the device (See column 2, lines 1-12, column 3, lines 39-55, column 4, lines 20-40, and column 5, lines 25-28, wherein results information is displayed to a user).

As per claim 10, Powers et al. discloses assigning a weight factor to information received within each evaluation category (See column 9, lines 10-30, column 10, lines 1-12, and column 11, line 62-column 12, line 25, which disclose weight factors).

As per claim 12, Powers et al. discloses wherein displaying the results further comprises numerically ranking the production process evaluation areas based on the results (See column 2, lines 1-12, column 3, lines 39-55, column 4, lines 20-40, and column 5, lines 25-28, wherein results are displayed in a numerically ordered ranking).

As per claim 13, Powers et al. teaches wherein displaying the results further comprises displaying the results in a format that facilitates comparisons between a plurality of production process evaluation areas (See column 3, line 43-column 4, line 15 and lines 25-35, column 5, lines 25-30, wherein the results are shown by date, time, user, hierarchical level, etc.).

As per claim 14, Powers et al. teaches wherein determining evaluation area categories further comprises selecting at least one evaluation area category that represents at least one of production complexity, conditions, control, error proofing, measurement, operator skill, planning, process, and shop practices (See figures 5A-B, column 2, lines 50-60, column 3, lines 45-60, column 9, lines 5-30, which disclose at least operator skill and productivity analysis).

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As per claim 15, Powers et al. teaches a method for evaluating performance of a production process using a network connecting a plurality of users, the network including a server and a plurality of user display devices, said method comprising:

soliciting from the users information concerning evaluation categories relevant to the production process (See column 2, lines 1-12 and 50-60, column 5, lines 10-27, column 9, lines 20-45, which disclose soliciting information from users);

assigning each evaluation category at least one weighted factor (See column 9, lines 10-30, column 10, lines 1-12, and column 11, line 62-column 12, line 25, which disclose weight factors);

compiling the information received from the users with the server (See figure 1, column 2, lines 58-67, and column 3, lines 14-24, which discusses the server and network architecture of the system. See column 2, lines 1-12, column 3, lines 39-55, column 4, lines 20-40, column 9, lines 14-32, which compile received information);

evaluating the received information in comparison to reference information (See column 5, lines 25-28, column 11, line 49-column 12, line 10 and lines 44-51, column 13, lines 18-36, which discloses processing the received information against reference information); and

displaying the results to the users (See column 2, lines 1-12, column 3, lines 39-55, column 4, lines 20-40, and column 5, lines 25-28, wherein results are displayed to a user).

Claims 16, 17, and 20 recite substantially similar elements as claims 13, 14, and 12, respectively, and are therefore rejected using the same art and rational as set forth above.

As per claim 18, Powers et al. discloses wherein soliciting from the users information concerning evaluation categories further comprises soliciting information from the users via at

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least one of a survey, radio push-buttons, and pull-down menu (See column 9, lines 20-45, which disclose at least radio buttons and drop-down lists).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5, 11, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powers et al. (U.S. 6,604,084).

As per claim 5, Powers et al. discloses wherein said server further configured to receive information including a numerical score that expresses a relative capability of a process performance (See column 1, line 57-column 2, line 12 and lines 51-57, column 3, lines 45-60, column 4, lines 26-36, column 9, lines 48-55, and column 13, lines 20-35, wherein information is received that expresses a relative capability of a process performance). However, Powers does not expressly disclose that this process performance is performing a desired manufacturing function.

Powers et al. discloses a performance evaluation system that utilizes productivity and quality data. Powers et al. specifically discloses that the performance evaluation system is used to evaluate an individual, a group, a process, or other suitable types of operation. See column 2, lines 50-60, and column 5, lines 45-52. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to receive information regarding the process of a manufacturing function in order to more efficiently perform a performance evaluation this

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process by efficiently communicating with users of a network environment that have input regarding the process. See column 1, lines 35-47, and column 2, lines 1-12, which discuss the benefits of such an automated system.

Claims 11 and 19 recite substantially similar elements to claim 5 and are therefore rejected using the same art and rational as set forth above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Powers et al. (U.S. 2002/0040309) teaches a performance evaluation system that gathers evaluation information from users and produces reports displays the evaluation.

Blevins et al. (U.S. 6,615,090) teaches collecting a storing data to later perform diagnostics on a process.

Newmark (U.S. 2002/0026257) teaches a capability analysis of a production line.

Tanaka et al. (U.S. 5,615,138) teaches evaluating a production process to determine new, optimized production process.

CEERIS International, Inc. (www.ceeris.com) discloses a process auditing system that evaluates a manufacturing process by interviewing users.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737.

The examiner can normally be reached on M-F, 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



bvd

August 6, 2005



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